

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JAZWARES, LLC,

Plaintiff,

v.

EMMANUEL JOSE PEREZ,

Defendant.

No. C 22-00094 WHA

**ORDER RE CIVIL CONTEMPT
AND SANCTIONS**

In this intellectual property infringement and unfair competition action, plaintiff seeks an order finding defendant in civil contempt and consequential monetary sanctions. For the reasons that follow, the motion is **GRANTED IN PART**.

This lawsuit is about “action figures.” Plaintiff Jazwares, LLC is a toy company. One of its most popular products is a line of action figures based on the names and images of professional wrestlers from All Elite Wrestling (AEW). These figures are allegedly collectible, and often come in limited edition runs as small as 500 to boost their popularity. All in all, the AEW figures generate millions of dollars annually for Jazwares (Mitchell Decl. ¶¶ 3, 19, Dkt. No. 5-2).

Defendant Emmanuel Jose Perez maintains an account on the social media platform Instagram with the handle “Prince Unmatched.” Jazwares became aware sometime in mid-2021 that Perez was posting photos of future products and prototypes from the AEW line of

1 action figures. Jazwares could tell that many of Perez’s posts depicted prototype AEW figures
2 because they were yet to be released, lacked painted hair and facial features, or had an “x”
3 somewhere on the figure to indicate it was a final engineering pilot (FEP). Somehow, Perez —
4 who has never worked for Jazwares — was getting his hands on these prototypes and pre-
5 release figures via an unnamed source, ostensibly to resell them. (*id.* ¶¶ 4–9).

6 In June 2021, a Jazwares vice president took it upon himself to take action, and
7 commented on one of the photos, stating “Purchasing or selling prototypes = stolen property.
8 Think twice. . .” (*ibid.*). Three months later, on September 29, Jazwares sent Perez an official
9 cease-and-desist email (*id.* Exh. A). Perez responded by including “#FUCKJAZWARES” in
10 his Instagram bio. Jazwares sent a further cease and desist on October 1. Perez continued to
11 troll Jazwares in response, suggesting Jazwares “try eBay” and publishing a mock press release
12 regarding the cease-and-desists. Adding more (alleged) injury to insult, Perez leaked
13 information on Jazwares’ upcoming partnership with Upper Deck and their plan to include
14 trading cards with Jazwares’ action figure packaging. This caused Jazwares to revise its
15 marketing strategy (*id.* at ¶¶ 10–14, 18). Jazwares filed suit on January 6, 2022.

16 In tandem with its complaint, Jazwares moved for a temporary restraining order. An
17 order set a hearing for the TRO for January 27 and stated that Jazwares must serve a copy of
18 the summons, complaint, and application for injunctive relief upon Perez by January 13.
19 Jazwares purportedly did so. Indeed, we know Perez received the summons because he posted
20 a photo of it on social media (Dkt. Nos. 12, 17). Despite this, Perez did not attend the January
21 27 hearing. An order then granted Jazwares’ motion for a TRO, expedited Perez’s deposition
22 (scheduling it for February 10), and set a February 24 hearing for Perez to show cause why a
23 preliminary injunction should not issue (Dkt. No. 19). Jazwares formally served a copy of this
24 order on Perez as well (Dkt. No. 22).

25 Perez was a no-show for his deposition. He did, however, make two further social media
26 posts online that violated the terms of the TRO. Consequently, a February 24 order entered a
27 preliminary injunction against Perez (Dkt. No. 28). Perez evaded personal service of the
28 preliminary injunction order (although the documents were also provided by mail and Perez

1 acknowledged receiving a courtesy copy via email) (Dkt. No. 30). At a March 16 hearing,
2 which Perez also did not attend, counsel and the Court discussed the possibility that Perez be
3 held in custody until completion of his deposition. Counsel was instructed to send a final
4 email to Perez alerting him that such an eventuality may take place (Dkt. No. 32). Perez
5 finally sat for a deposition on March 29 (Dkt. No. 37). No suggestion is made in the papers
6 that Perez was untruthful.

7 With the deposition finally in the rear-view mirror, this order takes up Jazwares' request
8 to find Perez in civil contempt and for sanctions in the amount of \$7,413.61 for the fees and
9 costs its counsel incurred in preparing for the deposition where Perez was a no-show.

10 Rule 37(b)(1) provides: "If the court where the discovery is taken orders a deponent to
11 be sworn or to answer a question and the deponent fails to obey, the failure may be treated as
12 contempt of court." Further, under Rule 37(b)(2)(A), if a party fails to obey an order to
13 provide discovery, the district court may treat that failure as contempt of court. "Civil
14 contempt consists of a party's disobedience to a specific and definite court order by failure to
15 take all reasonable steps within the party's power to comply." *United States v. DAS Corp.*, 18
16 F.4th 1032, 1039 (9th Cir. 2021) (citation and internal quotation marks omitted).

17 To demonstrate civil contempt, the movant must show through clear and convincing
18 evidence that the disobedient party: (1) had violated the terms of the order in question; (2) the
19 conduct went beyond a technical violation that would be consistent with substantial
20 compliance; and (3) that the violation was not based on a good faith and reasonable
21 interpretation of the order. *See ibid.* Attorney's fees and costs are an appropriate remedy for a
22 civil contempt award. *See Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir.
23 1992).

24 *First*, the January 27 order was specific and definite and there is no question that Perez
25 did not abide by it. The January 27 order was crystal clear — it ordered "defendant appear for
26 his in-person deposition on February 10, 2022" (Dkt. No. 19 at 2). The order imposed this
27 requirement so Jazwares could quickly locate the internal leak that was providing Perez with
28 unreleased AEW figures that he would resell and post about on social media. Despite formal

1 service of the order via process server, Perez did not appear on February 10 (Dkt. No. 22).
 2 Moreover, Jazwares provided a courtesy copy of the January 27 order to Perez via email that
 3 further explained the requirements of the order and other scheduling details (Dkt. No. 30-6).
 4 Perez has not explained his lack of participation.

5 *Second*, Perez's failure to appear for his deposition on February 10 does not qualify as a
 6 technical violation. Now, Perez did eventually sit for his deposition on March 29,
 7 approximately seven weeks after the court-ordered date. This order finds, however, that this
 8 does not render his initial failure to appear a technical violation. Indeed, Perez thumbed his
 9 nose at the process until alerted to the risk he might be held in federal custody until he
 10 provided testimony.

11 *Third*, Perez's failure to appear does not qualify as a reasonable, good faith interpretation
 12 of the order. Rather, Perez decided to flaunt the order's requirements. Consequently, Perez
 13 violated the January 27 order. Pursuant to Federal Rule of Civil Procedure 37(b), this order
 14 **HOLDS IN CIVIL CONTEMPT** defendant Emmanuel Jose Perez.

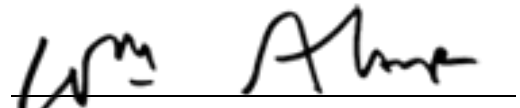
15 Jazwares requests \$6,460 in attorney's fees and \$953.61 in costs (Ulin Decl.) *First*,
 16 finding the listed expenses reasonable, this order tentatively **AWARDS \$953.61** in costs.
 17 *Second*, the lodestar for attorney's fees breaks down as follows: four billable hours prepping
 18 for the deposition by Member Attorney John C. Ulin (\$670 per hour); five hours preparing for
 19 the deposition and four hours preparing the instant motion by Associate Attorney Eric Sefton
 20 (\$420 per hour). Notably, the nine hours billed to preparing for defendant's deposition did not
 21 go to waste — Jazwares' counsel did eventually depose Perez. Counsel did not have to
 22 reinvent the wheel and conduct all that preparation again for the March 29 deposition.
 23 Consequently, this order tentatively **AWARDS \$2,680** in attorney's fees. Any greater amount
 24 would rank as excessive. In sum, this order tentatively **SANCTIONS** Perez in the total amount
 25 of **\$3,633.61** (\$953.61 plus \$2,680).

26 To give defendant Perez a further opportunity to be heard on these issues, an in-person
 27 hearing will be held on **MAY 12, 2022, AT 11:00 A.M.**, in Courtroom 12, 450 Golden Gate
 28 Avenue, San Francisco, CA 94102, at which time both sides may be heard on the tentative

1 ruling. Jazwares must promptly serve this order by formal process and file the proof of service
2 by **APRIL 28**.

3 **IT IS SO ORDERED.**

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5 Dated: April 22, 2022.

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8 WILLIAM ALSUP
9 UNITED STATES DISTRICT JUDGE
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